

Proposed February 2, 2009  
Finalized June 29, 2009

**Oregon Confined Animal Feeding Operation  
National Pollutant Discharge Elimination System  
General Permit #01 Renewal  
Evaluation Report and Fact Sheet**

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**Oregon CAFO NPDES General Permit #01 Renewal  
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**Table of Contents**

<b>1. Overview .....</b>	<b>1</b>
1.1 Proposed and Final Permit Action .....	1
1.2 Who Needs Permit Coverage? .....	1
1.3 Authority for General Permit .....	2
1.4 When is an Individual Permit Necessary? .....	2
1.5 Permitting Options in Designated Groundwater Management Areas .....	3
<b>2. November 2008 EPA Adoption of Regulations for <i>Concentrated Animal Feeding Operations</i> .....</b>	<b>5</b>
2.1 Overview .....	5
2.2 “Duty to Apply” Invalid .....	5
2.3 Oregon Response to Invalidation of “Duty to Apply” .....	5
2.4 Animal Waste Management Plans: Public Notice and Enforceable Effluent Limitation .....	6
<b>3. CAFO Activities and Pollutants .....</b>	<b>6</b>
3.1 Regulated Activities .....	6
3.2 CAFO Pollutants .....	7
3.3 Estimate of CAFO Wastes .....	7
<b>4. Applicability of Antidegradation Policy and TMDLs .....</b>	<b>7</b>
4.1 Antidegradation policy review .....	7
4.2 Antidegradation policy: Special policies and guidelines (OAR 340-041-0350) .....	7
4.3 Total Maximum Daily Loads (TMDLs) .....	8
<b>5. Application Process .....</b>	<b>8</b>
5.1 Renewal Application .....	8
5.2 New Applications: <i>Application to Register (ATR)</i> .....	8
5.3 ODA Notice of Permit Registration .....	9
<b>6. Discussion of Permit Renewal .....</b>	<b>9</b>
6.1 Permit Outline .....	9
6.2 Summary of Changes to 2003 General Permit .....	10
6.3 Definitions .....	14
6.4 Special Conditions: S1. Permit Coverage .....	16
6.5 Special Conditions: S2. Discharge Limitations and Prohibitions .....	21
6.6 Special Conditions: S3. Animal Waste Management Plan .....	25
6.7 Special Conditions: S4. Monitoring, Inspection, Recordkeeping, and Reporting Requirements .....	30
6.8 General Conditions .....	34
<b>7. Public Comment Period and Response to Comments .....</b>	<b>34</b>
7.1 Public Comment Period .....	34
7.2 Public Hearing .....	35
7.3 Response to Comments .....	35

**Oregon CAFO NPDES General Permit #01 Renewal  
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**List of Tables**

Table 1: CAFOs Requiring Permit Coverage .....	4
Table 2: Summary of Proposed Changes .....	10
Table 3: Public Notice and Participation Requirement.....	20

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## 1. Overview

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### 1.1 Proposed and Final Permit Action

The Oregon Department of Agriculture (ODA) and Department of Environmental Quality (DEQ) proposed on February 2, 2009 to renew National Pollutant Discharge Elimination System (NPDES) General Permit #01 for confined animal feeding operations (CAFOs) in Oregon. This permit was initially adopted on August 15, 2003 by rule and expired on July 31, 2008; however, issuance of the renewal proceeded by order rather than rule as allowed by Oregon Revised Statute (ORS) 468B.050(2), which was previously amended to allow issuance of a general permit by Department order. The general permit was also renumbered as #01-2009 to reflect the year of renewal.

Following the end of the public comment period on March 16, 2009 and after addressing public comment, the general permit was submitted to the U.S. Environmental Protection Agency (EPA) on May 8, 2009 for approval. EPA approved the permit on June 10, 2009 and ODA and DEQ issued it on June 29, 2009. The general permit will expire within five years of permit issuance on May 31, 2014. This renewal affects 581 CAFOs that are currently registered to the 2003 version of the general permit, future CAFOs desiring general permit coverage, and interested parties potentially affected by CAFO operations.

### 1.2 Who Needs Permit Coverage?

Owners or operators of CAFOs described in *Table 1: CAFOs Requiring Permit Coverage*, p. 4, are required to obtain permit coverage. Permit coverage is required by ORS 468B.050(1)(d) to prevent contamination of surface water and groundwater from improper collection, storage, and disposal of CAFO wastes. Title 40 Code of Federal Regulations (CFR) §122.1(b)(2)(i) also requires NPDES permits for CAFOs defined as *concentrated* that discharge or propose to discharge pollutants to waters of the U.S.

While the type of CAFOs requiring permit coverage has not changed from the 2003 general permit, the proposed renewal was revised to clarify and detail the types of CAFOs that need permit coverage. See section 6.4, p. 16, for more detail. In response to comments received on the proposed permit, the following statements were added to the general permit to better explain why permit coverage is required and what the permit covers:

- a) *Pursuant to ORS 468B.200, it is the policy of the State of Oregon to protect the quality of the groundwater and surface waters of Oregon by preventing animal wastes from discharging into waters of the state. To implement this policy, ORS 468B.050(1)(d) requires that any person who owns or operates a CAFO listed in S1.A.2 below to obtain a permit from ODA and DEQ. As a result, there is no state process to certify that a CAFO does not discharge or propose to discharge to waters of the state and permit coverage is required regardless of discharge status. Coverage under this general permit is required for all CAFOs listed in S1.A.2 unless application is made for an individual permit or an individual permit is required by ODA and DEQ. (See general permit condition S1.A.1 of S1.A When is a Permit Required?)*

- b) *Consistent with ORS 468B.200, ODA and DEQ developed this general permit to prohibit routine discharges of manure, litter, and process waste water from CAFO operations to waters of state. Discharges of manure, litter, or process waste water to waters of the state are only expected to occur under extreme weather conditions and as limited by the conditions of this general permit. Further, the general permit only authorizes the discharge of pollutants resulting from the processes, wastes, and operations that have been clearly identified in the permittee's AWMP approved by ODA. (See general permit condition S1.D.1 of S1.D Permit Coverage.)*

See the *Summary of comments and response to comments received for the proposed renewal of CAFO NPDES General Permit #01-2009, June 29, 2009*, for more information.

### **1.3 Authority for General Permit**

DEQ and EPA regulations [Oregon Administrative Rule (OAR) 340-045-0033(2) and 40 CFR §122.28, respectively] authorize the issuance or renewal of *general* permits when the following conditions are met:

- There are several minor sources of activities that involve the same or substantially similar types of operations.
- The sources or activities have the potential to discharge or dispose of the same or similar types of waste.
- The general permit requires the same or similar monitoring requirements, effluent limitations, and operating conditions for the categories.
- The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

The use of a general permit for regulating Oregon CAFOs is appropriate because the waste characteristics from different CAFOs are substantially similar. In addition, the effluent limitation guidelines, best management practices, and other requirements for CAFOs covered by this general permit are similar as well.

### **1.4 When is an Individual Permit Necessary?**

Most CAFOs in Oregon will be sufficiently regulated under this general permit; however, the ODA or DEQ director may decide that a particular operation must be covered by an individual permit or any owner or operator of a CAFO required to obtain coverage under this NPDES general permit may request issuance of an individual permit. Pursuant to OAR 340-045-0033(10), situations when an individual permit may be required include:

- The discharge or activity is a significant contributor of pollution or creates other environmental problems.
- The operator is not in compliance with the terms and conditions of the general permit, submitted false information or is in violation of any applicable law.
- A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged.
- New effluent limitation guidelines are promulgated for point sources covered by this general permit and the guidelines are not already in the permit.
- Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

### **1.5 Permitting Options in Designated Groundwater Management Areas**

Permitting options for CAFOs in groundwater management areas will be evaluated on a case-by-case basis. ODA expects that a majority of these operations will be adequately regulated by the general permit. In situations where a CAFO might affect groundwater quality, additional monitoring requirements or management practices may be required under the general permit or an individual permit may be required.

**Table 1: CAFOs Requiring Permit Coverage**

Type of confined animal feeding operation requiring permit coverage	CONFINED		CONCENTRATED		
	<i>Small</i>	<i>Medium</i>	<i>Small</i>	<i>Medium</i>	<i>Large</i>
	<ul style="list-style-type: none"> <li>• Confines more than one animal for more than 4 months on prepared surface</li> <li>• Waste water control facility or disposal system for wet wastes</li> </ul>	<ul style="list-style-type: none"> <li>• Confines for more than 4 months on prepared surface</li> <li>• Waste water control facility or disposal system for wet <u>or</u> dry wastes</li> </ul>	<ul style="list-style-type: none"> <li>• Stabled or confined and fed or maintained for total of 45 days or more in any 12-month period</li> <li>• Crops, vegetation, forage growth, or post-harvest residues not sustained in normal growing season in lot or facility</li> <li>• Significant contributor of pollutants to waters of the U.S.</li> <li>• Designated by director</li> </ul>	<ul style="list-style-type: none"> <li>• Stabled or confined and fed or maintained for total of 45 days or more in any 12-month period</li> <li>• Crops, vegetation, forage growth, or post-harvest residues not sustained in normal growing season in lot or facility</li> <li>• Discharging pollutants to waters of the U.S.</li> </ul>	<ul style="list-style-type: none"> <li>• Stabled or confined and fed or maintained for total of 45 days or more in any 12-month period</li> <li>• Crops, vegetation, forage growth, or post-harvest residues not sustained in normal growing season in lot or facility</li> </ul>
mature dairy cows <sup>1</sup>	<200	200-699	<200	200-699	≥700
veal calves	<300	300-999	<300	300-999	≥1,000
cattle <sup>2</sup>	<300	300-999	<300	300-999	≥1,000
swine ≥ 55 lbs	<750	750-2,499	<750	750-2,499	≥2,500
swine < 55 lbs	<3,000	3,000-9,999	<3,000	3,000-9,999	≥10,000
horses	<150	150-499	<150	150-499	≥500
sheep or lambs	<3,000	3,000-9,999	<3,000	3,000-9,999	≥10,000
turkeys	<16,500	16,500-54,999	<16,500	16,500-54,999	≥55,000
chickens, including laying hens or broilers w/wet waste system	<9,000	9,000-29,999	<9,000	9,000-29,999	≥30,000
laying hens w/dry waste system	NA	25,000-81,999	<25,000	25,000-81,999	≥82,000
broiler chickens w/dry waste system	NA	37,500-124,999	<37,500	37,500-124,999	≥125,000
ducks w/other than wet waste system	<10,000	10,000-29,999	<10,000	10,000-29,999	≥30,000
ducks w/wet waste system	<1,500	1,500-4,999	<1,500	1,500-4,999	≥5,000
other animal type	As determined by ODA. <sup>3</sup>		Designated by director	NA	NA

<sup>1</sup> Whether milked or dry.

<sup>2</sup> Other than mature dairy cows or veal calves; cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

<sup>3</sup> To determine the number of animals that require permit coverage, ODA would compare the operation to the most similar animal type in the table.

## **2. November 2008 EPA Adoption of Regulations for *Concentrated Animal Feeding Operations***

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### **2.1 Overview**

In February 2003, EPA revised federal regulations for animal feeding operations (68 Federal Register 7176, Feb. 12, 2003). Industry organizations and environmental groups responded to the regulations by filing petitions for judicial review of certain aspects of the 2003 rule. The case was brought before the U.S. Court of Appeals for the Second Circuit and on February 25, 2005 the court ruled on the petitions in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2<sup>nd</sup> Cir. 2005). The court's decision made several key changes to the NPDES permit program for *concentrated animal feeding operations* and EPA adopted regulation in November 2008 (73 Federal Register 70418, Nov. 20, 2008) to implement the court's decision. The changes most relevant to implementation of Oregon's CAFO program are discussed below; other changes are discussed in the remainder of this document.

### **2.2 "Duty to Apply" Invalid**

Previously, EPA required all animal feeding operations defined as *concentrated* (see *Table 1: CAFOs Requiring Permit Coverage*, p. 4, for more detail) to apply for NPDES permit or demonstrate that they have no potential to discharge to waters of the U.S. (primarily surface waters). This was commonly known as the "duty to apply" provision of the federal rules. The court found that EPA exceeded its statutory authority with this approach and only actual or proposed discharges to waters of the U.S. are subject to NPDES permitting requirements. To address the court's decision, EPA proposed a change to federal regulation in June 2006 (71 Federal Register 37744, June 30, 2006) to remove the "duty to apply" provision and finalized the change in their November 2008 regulation.

### **2.3 Oregon Response to Invalidation of "Duty to Apply"**

The court's invalidation of EPA's "duty to apply" provision and the 2008 EPA regulation do not have a big impact on Oregon's program because state statutory authority to regulate animal feeding operations is broader than the authority given to EPA by the Clean Water Act (CWA). Oregon Revised Statute (ORS) 468B.050 and 468B.215 allow ODA and DEQ to regulate animal feeding operations smaller than the federal animal number thresholds and provide protection for groundwater as well as surface water. In addition, the state permitting requirement for animal feeding operations is not contingent on an actual discharge to surface waters, rather a permit is required based on how long animals are confined and whether waste water control facilities are present at the operation.

In Oregon, ODA and DEQ regulate a majority of CAFOs with CAFO NPDES General Permit #01 even though some CAFOs are not required by federal regulation to obtain an NPDES permit. This approach was developed in 2003 for the following reasons:

- The general permit approach is administratively more efficient for ODA and DEQ to implement. Increased efficiency allows ODA to focus on technical assistance, inspection, and enforcement rather than developing individual permits.
- A permit holder who is in compliance with the terms of the general permit is in compliance for purposes of enforcement with the CWA [Sections 301,302, 306, 307, 318, 403 and 405(a) –

- (b)] and ORS 468B.030, 468B.035, and 468B.048, and is subject to enforcement actions by ODA, DEQ, or citizens only upon noncompliance with permit conditions.
- The option to apply for an individual NPDES or state individual Water Pollution Control Facilities (WPCF) permit is still available to owners or operators of a regulated CAFO who do not want to register under the general permit.

The court decision did cause some confusion over when an Oregon CAFO meets the federal definition of a *large, medium, or small concentrated animal feeding operation* and how ODA and DEQ would characterize different operations. As a result, the general permit was revised to provide more detail on the types of CAFOs that need permit coverage in Oregon. No change was made to the universe of CAFOs needing permit coverage. See section 6.4, p. 16, for more information on this revision.

#### **2.4 Animal Waste Management Plans: Public Notice and Enforceable Effluent Limitation**

The court also determined that nutrient management plans (animal waste management plans or AWMPs in Oregon) must be made available to the public for review. The November 2008 regulation adopted by EPA provided further direction on this issue. As a result, ODA and DEQ developed a public participation process prior to granting NPDES general permit coverage and for proposed changes to an AWMP, which is detailed in the general permit. For more information on public participation, see section 6.4, p. 19.

Additionally, the court determined that AWMPs must be made part of the permit and enforceable as an “effluent limitation.” No changes are necessary to the general permit to respond to this decision because Oregon’s general permit has always required the permittee to comply with all terms and conditions of its approved AWMP and specifies that failure of the permittee to comply with its AWMP is a violation of the permit; however, a statement was added to S3.A.2 of the general permit to clarify that the permittee’s ODA-approved AWMP is incorporated into the general permit by reference. For more information on the AWMP requirement, see section 6.6, p. 25.

### **3. CAFO Activities and Pollutants**

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#### **3.1 Regulated Activities**

The general permit continues to regulate manure, litter, and process waste water from CAFO activities. CAFO activities include the confinement of animals for meat, milk, or egg production and the stabling of animals in pens, barns, or houses where the animals are fed or maintained at the place of confinement. Generally, animals are congregated in confined areas along with their feed and manure, and feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures. Process waste water and wastes may include:

- Spillage or overflow from animal watering systems that comes into contact with manure, litter or bedding.
- Water from washing, cleaning, or flushing of pens, barns, manure pits, or other CAFO facilities.
- Water from direct contact washing or spray cooling of animals.
- Water from dust control.
- Washing and cleaning of the milking system and waste milk.

- Any water that comes into contact with raw materials, products, or byproducts including manure, litter, feed, milk, or bedding.

### **3.2 CAFO Pollutants**

The most common pollutants in the process wastes and waste water include biochemical oxygen demand (BOD), total suspended solids (TSS), nutrients (nitrogen and phosphorous compounds), and bacteria. BOD demand depletes dissolved oxygen in water, using the oxygen that would normally be needed to support aquatic life. Nutrients also exert a demand for oxygen by increasing algae and aquatic plant growth and dissolved oxygen levels will decrease when the algae and plants decompose. The lowering of dissolved oxygen levels in streams and lakes can also cause fish kills. Other forms of nitrogen can also have negative effects: ammonia at high levels in surface water can be toxic to fish, and high nitrate levels in drinking water can be toxic to humans. Bacteria, viruses, and parasites found in animal waste can increase the risk of waterborne diseases. Fecal coliform and *E. coli* bacteria are commonly used as biological indicators to assess whether there is a threat to public health or beneficial uses of a water body (i.e., recreational, industrial, domestic drinking water supply, or agricultural uses).

### **3.3 Estimate of CAFO Wastes**

At the time the general permit was initially proposed for renewal (September 2008), 581 animal facilities were registered to CAFO NPDES General Permit #01, which included 316 dairy, 41 poultry, 162 beef and dairy heifer, and 62 other operations. ODA estimates that these CAFOs generate 10 million tons of waste on a yearly basis.

## **4. Applicability of Antidegradation Policy and TMDLs**

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### **4.1 Antidegradation policy review**

The antidegradation policy in OAR 340-041-0004 requires that degradation of existing water quality be prevented unless necessary for economic and social benefit. DEQ has determined that renewal of this general permit is consistent with the antidegradation policy and will not degrade existing water quality because: 1) the permit prohibits discharge in most cases and, when discharges are allowed, they must not cause or contribute to a violation of state water quality standards, and 2) there is no on-going discharge.

### **4.2 Antidegradation policy: Special policies and guidelines (OAR 340-041-0350)**

To preserve or improve the existing high quality water for municipal water supplies, recreation and preservation of aquatic life in the Clackamas River, McKenzie River (above Hayden Bridge) and North Santiam River subbasins, OAR 340-041-0350 *The Three Basin Rule* prohibits new or increased waste discharges in these subbasins. As discussed in the previous section, the general permit renewal maintains the existing permit's discharge limitations and prohibitions. OAR 340-041-0350(5) allows renewal of permits within these three basins provided there is no increase in discharge load. Since the general permit requires that wastes be applied on land at agronomic rates and discharge is essentially prohibited, there will be no environmentally significant increase in discharge load. New CAFOs also will be allowed to register under the general permit provided that their waste loads are applied on land at agronomic rates. Application on land at agronomic rates is not considered an increase in wasteload pursuant to OAR 340-041-0350(5)(c).

#### **4.3 Total Maximum Daily Loads (TMDLs)**

OAR 340-045-0035(3) requires DEQ to explain: 1) if a proposed permit renewal will allow the discharge of pollutants that could affect parameters for which a water body may be water quality limited under Section 303(d)(1) of the Clean Water Act, and 2) if the permit does allow such discharge, how DEQ can allow it. As explained below, the general permit does not allow this type of discharge.

The CAFOs covered by the general permit have the potential to discharge a variety of pollutants (see section 3.2, p. 7) to receiving streams throughout the state. Many of these streams are listed as water quality limited for dissolved oxygen, temperature, and bacteria. However, the general permit continues to prohibit any discharge that will cause or contribute to the violation of water quality standards and only allows discharges in the event of a 25-year, 24-hour or larger rainfall event. In addition, discharges may only occur from a facility if that facility has been properly, designed, constructed, operated, and maintained to contain all process-generated waste water plus the runoff from a 25-year, 24-hour rainfall event. ODA and DEQ do not expect water bodies to fail to meet water quality standards as a result of CAFO discharges during large rainfall events because of high flows in the receiving water body and the diluted nature of discharges should they occur. Discharges are also not expected during summer months, when water bodies are typically limited for dissolved oxygen, temperature, and bacteria, because of fewer rain events.

As provided in the 2003 general permit and maintained in the renewal, permit coverage may be terminated if TMDLs are established that identify a CAFO's discharge during large rainfall events as a contributor to a stream that is water quality limited. In these situations, an individual permit or different general permit may be required that would include waste load allocations for the applicable CAFO(s).

## **5. Application Process**

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### **5.1 Renewal Application**

ODA provided renewal applications to existing permittees in late June 2008; renewal applications were due on July 31, 2008. ODA and DEQ administratively extended permit coverage for permittees with properly completed applications submitted before the July 31, 2008 expiration date of the 2003 general permit. Permittees with administratively extended permit coverage may continue to operate under the existing permit until they receive notification from ODA that they have been registered to the renewed permit. Permittees that do not meet the deadline or do not submit a complete application will need to submit an *ODA Application to Register (ATR)* discussed below and are subject to enforcement action if they operate without a permit.

### **5.2 New Applications: *Application to Register (ATR)***

ODA will provide the *ATR* form to new applicants. Applicants must certify that all of the information provided in the *ATR* is true, accurate, and complete. Applicants must provide the following information:

- (a) Legal name and address of applicant and name of owner, if different.
- (b) Information about the corporate structure of the applicant and owner.
- (c) Facility information, including name, address, and latitude and longitude of production area or entrance to production area.

- (d) Identity of receiving streams.
- (e) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area.
- (f) Specific information about the number and type of animals, whether in open confinement and/or housed under roof (e.g., beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other).
- (g) The type of containment and storage (e.g., anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process waste water storage (tons/gallons).
- (h) The total number of acres under control of the applicant available for land application of manure, litter, or process waste water.
- (i) Estimated amount of manure, litter, and process waste water generated per year.
- (j) Estimated amount of manure, litter, and process waste water transferred to other persons per year (tons/gallons).
- (k) Animal waste management plan (AWMP).

### 5.3 ODA Notice of Permit Registration

When the general permit is renewed, an *ODA Notice of Registration*, *Oregon CAFO General Permit Summary*, and copy of the renewed general permit will be issued to permittees that submitted a complete renewal application. The *Oregon CAFO General Permit Summary* provides a summary of permit terms and permit conditions to be used as a quick reference guide. This same process will be used for new applicants. The *Notice of Registration* will contain the following:

- Legal name of CAFO owner or operator, CAFO name, address, and contact information.
- Effective date of registration.
- Maximum number of animals the operation is permitted to allow at the facility based on the information provided in the *ATR* or renewal application.
- Regulatory status of the CAFO (see section 6.4, S1.C, p. 17, for more information).

## 6. Discussion of Permit Renewal

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### 6.1 Permit Outline

The CAFO NPDES general permit is organized as follows:

- Face page (identifies the type of permit, statutory authority for permit issuance, issuance date, and expiration date)
- Table of contents
- Definitions
- Special Conditions 1 (S1): Permit Coverage
- Special Conditions 2 (S2): Discharge Limitations and Operating Requirements
- Special Conditions 3 (S3): Animal Waste Management Plan
- Special Conditions 4 (S4): Monitoring, Inspection, Recordkeeping, and Reporting Requirements
- General Conditions

Note: The special conditions are unique to this general permit, whereas the general conditions are required in all NPDES permits.

## 6.2 Summary of Changes to 2003 General Permit

Table 2 below provides a summary of the changes to the 2003 general permit.

**Table 2: Summary of Changes to 2003 General Permit**

ISSUE	EXISTING PERMIT	FINAL PERMIT	FOR MORE INFO.
Definitions	Detailed and at end of S1. Permit Coverage.	Definitions moved to its own section at front of permit. References replace detail when applicable. Added definition of frozen soil, saturated soil, small and medium confined animal feeding operations, setback, vegetative buffer, and waters of the U.S. Removed definitions that are no longer applicable.	Section 6.3, p. 14
<b><i>S1. PERMIT COVERAGE</i></b>			
When is a Permit Required?		Insertion of table to clarify when a permit is required.	Section 6.4, p. 16, <i>S1.A When is a Permit Required</i>
Schedule to Obtain Permit Coverage	Schedules for the following: 1. All newly constructed CAFOs 2. Existing CAFOs that met the previous definition of <i>concentrated</i> AFOs 3. Existing CAFOs newly defined as <i>concentrated</i> AFOs as of April 14, 2003 4. Existing CAFOs that become defined as <i>concentrated</i> AFOs after April 14, 2003 5. All other existing CAFOs that are not <i>concentrated</i> AFOs 6. AFOs designated by the director	Simplified: 1. Proposed facilities or facilities electing coverage: <i>ATR &amp; AWMP</i> due 180 days before commencing operation 2. Renewals: Renewal application due according to date specified by ODA but no later than expiration date of permit.	Section 6.4, p. 16, <i>S1.C Requirements and Schedule to Obtain Permit Coverage</i>
Explanation of need to request confidentiality	Not included.	Included because of new public notice provision, see below.	Section 6.4, p. 18, <i>S1.G Request for Confidentiality</i>

ISSUE	EXISTING PERMIT	FINAL PERMIT	FOR MORE INFO.
<p>Public participation (public notice and hearing opportunity)</p>	<ol style="list-style-type: none"> <li>1. Issuance of general permit was noticed to the public and hearings were held.</li> <li>2. Individual registrations to general permit were not noticed.</li> </ol>	<p>(Note: The general permit renewal was noticed to the public and a hearing provided.)</p> <ol style="list-style-type: none"> <li>1. To comply with 2008 EPA federal regulation, individual <i>ATRs</i> and their <i>AWMPs</i> must be noticed. Permit requires:           <ul style="list-style-type: none"> <li>• Public notice for 35 days of new registrations (detailed information provided) through newspaper, website, and email.</li> <li>• Expedited public notice for 35 days for renewal registrations (facility name and county provided) through email and website.</li> <li>• Opportunity for public hearing.</li> </ul> </li> <li>2. 2008 EPA federal regulation also requires public notice of “substantial changes” to <i>AWMP</i> for <i>concentrated animal feeding operations</i>. Permit requires:           <ul style="list-style-type: none"> <li>• Public notice for 35 days through email and website when “substantial changes” are proposed.</li> <li>• Opportunity for public hearing.</li> </ul> </li> <li>3. ODA and DEQ developed list of “substantial changes” for <i>small and medium confined animal feeding operations</i>. Permit requires:           <ul style="list-style-type: none"> <li>• Public notice for 14 days through email and website when “substantial changes” are proposed.</li> <li>• Opportunity for public hearing.</li> </ul> </li> </ol>	<p>Section 6.4, p. 19, <i>S1.H Public Notice and Participation Requirement</i></p>

ISSUE	EXISTING PERMIT	FINAL PERMIT	FOR MORE INFO.
<b><i>S2. DISCHARGE LIMITATIONS AND OPERATING REQUIREMENTS</i></b>			
New source swine, poultry, and veal <i>large concentrated AFO</i> limitation		Removed reference to 100 year, 24-hr rainfall event as a result of 2008 EPA federal regulation.	Section 6.5, p. 22, <i>S2.B Production Area Limitations, New source swine, poultry, and veal concentrated animal feeding operations</i>
Applications to frozen soil		New requirement to include frozen soil application procedures in AWMP.	Section 6.5, p. 22, <i>S2.C Land Application Limitations</i>
Applications to saturated soils		Clarification that in some cases an application to saturated soils may be a desired alternative to allowing waste storage facilities to overflow directly to surface waters. In these situations, the application is considered an “upset” and general condition G18 must be followed.	Section 6.5, p. 22, <i>S2.C Land Application Limitations</i>
Setback requirement	<i>Large concentrated animal feeding operation</i> requirement for 100ft setback, 35ft vegetative buffer, or demonstration of alternative.	Setback requirement expanded to all CAFOs, but no size specification for non-large concentrated animal feeding operations.	Section 6.5, p. 24, <i>S2.J Setback Requirement</i>
Manure, litter, or process waste water transfer		Clarification that permittee retains responsibility for manure, litter, or process waste water until transfer or export is completed with the required documentation. Specifies that <i>large concentrated animal feeding operation</i> must have current manure nutrient analysis from the previous 12 months.	Section 6.5, p. 25, <i>S2.K Manure Litter, or Process Waste Water Transfers</i>
Proper disposal of other wastes		Moved condition to properly dispose of wastes other than manure, litter, and process waste water from <i>S3.C AWMP Elements</i> to this section.	Section 6.5, p. 25, <i>S2.L Proper Disposal of Other Waste</i>

ISSUE	EXISTING PERMIT	FINAL PERMIT	FOR MORE INFO.
<b><i>S3. ANIMAL WASTE MANAGEMENT PLANS</i></b>			
AWMP implementation and compliance	December 31, 2006 due date for implementation of AWMPs.	December 31, 2006 due date applicable for most CAFOs under existing general permit. Under revised permit, AWMPs from new applicants and revisions to existing AWMPs must be implemented by February 27, 2009. New applicants commencing activities after February 27, 2009 must have ODA-approved AWMP implemented at start-up.	Section 6.6, p. 25, <i>S3.A AWMP Implementation and Compliance</i>
AWMP elements		More information on land application protocols that need to be detailed added. Compost management plan requirement if applicable under OAR 340-096 included. Added requirements for frozen soil applications and requirement to include procedures for transfer or export of manure, litter, or process waste water.	Section 6.6, p. 25, <i>S3.C AWMP Elements</i>
<b><i>S4 MONITORING, INSPECTION, RECORDKEEPING, AND REPORTING REQUIREMENTS</i></b>			
Analytical monitoring requirements		No major changes. Reformatted into a table and additional information added on specific parameter to be analyzed and sample method references provided.	Section 6.7, p. 30, <i>S4.A Monitoring Requirements</i>
Inspection requirements		No major changes. Reformatted into a table and clarification added that equipment used for land application need only be inspected when in use.	Section 6.7, p. 31, <i>S4.B Inspection Requirements</i>
Recordkeeping and reporting requirements		No major changes. Reformatted into a table and deleted requirement to maintain animal mortality management and practices because it is required in AWMP.	Section 6.7, p. 31, <i>S4.C Recordkeeping and Availability Requirements</i>

ISSUE	EXISTING PERMIT	FINAL PERMIT	FOR MORE INFO.
Annual report		Added requirements to report number of animals by type averaged over the year and estimate of total manure, bedding, litter, process waste water, and other material that comes into contact with manure. Certification statement requirement that information is true, accurate, and complete also added. Additional reporting requirement for <i>concentrated operations</i> that discharge or propose to discharge to report data collected throughout the previous calendar year.	Section 6.7, p. 32, <i>S4.D Reporting Requirements</i>
Additional monitoring		Added statement to notify permittees that if they have two or more discharges within a 24 month period that are not associated with a 25-year, 24-hour or greater rainfall event, ODA may require surface water and/or groundwater quality monitoring or transfer the permittee to an individual permit.	Section 6.7, p. 34, <i>S4.E Additional Monitoring</i>
<b>GENERAL CONDITIONS</b>			
General conditions	Some federal requirements only referenced.	Provided federal requirements in detail. Eliminated of state requirements if duplicated in federal requirements.	Section 6.8 General Conditions, p. 34

### 6.3 Definitions

The definitions section was moved to the front of the general permit and into its own section to make it easier to use. In addition, several definitions were shortened by only providing a reference to the applicable state or federal citation where the definition was originally developed. This was done to shorten the document as well as to clarify that the definitions in ORS, OAR, and CFR are binding.

In addition, the following changes were made to the definitions:

- A. *Animal feeding operation* and *concentrated animal feeding operation* were deleted from the definitions because they are cited and explained further in condition S1.A of the revised permit.

- B. Definition for *saturated soil* was added as follows because it was previously omitted:  
*“Saturated soil” means soil with all available pore space filled that has reached its maximum retentive capacity as defined in “Qualitative Description of Soil Wetness” (Brady, N. and Weil, R., p. 201).*
- C. Three new definitions were added to the permit because they are new terms used in the permit:
- 1) *“Frozen soil” means soil that has a soil temperature of 32° F (or 0° C) or less in any three (3) continuous inches of the top twelve (12) inches of soil.*
  - 2) *“Medium confined animal feeding operation” means a confined animal feeding operation that meets the animal numbers specified in any of the following categories. A medium confined animal feeding operation is only required to apply for this permit if it confines for more than four (4) months and has a waste water control facility or disposal system for wet or dry wastes. (See Table 1: CAFOs Requiring Permit Coverage.)*
    - a. *200 to 699 mature dairy cattle, whether milked or dry;*
    - b. *300 to 999 veal calves;*
    - c. *300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;*
    - d. *750 to 2,499 swine each weighing 55 pounds or more;*
    - e. *3,000 to 9,999 swine each weighing less than 55 pounds;*
    - f. *150 to 499 horses;*
    - g. *3,000 to 9,999 sheep or lambs;*
    - h. *16,500 to 54,999 turkeys;*
    - i. *9,000 to 29,999 laying hens or broilers if the operation uses waste water control facilities for wet waste;*
    - j. *37,500 to 124,999 chickens (other than laying hens), if the operation uses waste water control facilities for wet waste;*
    - k. *25,000 to 81,999 laying hens if the operation does not use waste water control facilities for wet waste;*
    - l. *10,000 to 29,999 ducks if the operation does not use waste water control facilities for wet waste; or*
    - m. *1,500 to 4,999 ducks if the operation uses waste water control facilities for wet waste.*
    - n. *For other animal types, ODA will determine the appropriate animal numbers by comparing the operation to the most similar animal type listed above.*
  - 3) *“Small confined animal feeding operation” means a confined animal feeding operation with animal numbers below the medium confined animal feeding operation levels that is not designated as a small concentrated animal feeding operation. A small confined animal feeding operation is only required to apply for this permit if it confines for more than four (4) months and has a waste water control facility or disposal system for wet wastes. (See Table 1: CAFOs Requiring Permit Coverage.)*
- D. “100 year, 24 hour rainfall event” was removed because it is no longer referenced in the permit (see the discussion in *New source swine, poultry, and veal large concentrated animal feeding operations*, p. 22, in section 6.5, for more detail).
- E. “Underground water” was removed because the term is not used in the permit.
- F. “Discharge of pollutants” and “manure” definitions were clarified.

- G. In response to comments received on the proposed permit, three definitions were added for clarification of the following terms that are used in the general permit. See the *Summary of comments and response to comments received for the proposed renewal of CAFO NPDES General Permit #01-2009*, June 29, 2009, for more information.
- 1) “Setback” as defined at 40 CFR §412.4(b)(1) means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process waste water may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.
  - 2) “Vegetative buffer” as defined at 40 CFR §412.4(b)(2) means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.
  - 3) “Waters of the U.S.” is defined at 40 CFR §122.2.

#### **6.4 Special Conditions: S1. Permit Coverage**

##### ***S1.A When is a Permit Required?***

The intent of this section remains the same as the 2003 general permit; however, the general permit was revised to provide more detail on the types of CAFOs that need permit coverage. A statement describing the policy of the state of Oregon for regulation of CAFOs was also included as discussed previously in section 1.2, p. 1 of this document. The permit now states that any person who owns or operates a CAFO defined as follows is required to obtain coverage under this permit:

- *Small confined animal feeding operation* that confines animals for more than four (4) months and has a waste water control facility or disposal system for wet wastes.
- *Medium confined animal feeding operation* that confines animals for more than four (4) months and has a waste water control facility or disposal system for wet or dry wastes.
- *Small, medium, or large concentrated animal feeding operation* defined in 40 CFR §122.23.

A table similar to *Table 1: CAFOs Requiring Permit Coverage*, p. 4, was also inserted into the permit to provide more detail on each of the categories described above. Any person who owns or operates a CAFO as described above is required to obtain coverage under the general permit unless an individual permit is obtained.

##### ***S1.B Election of Permit Coverage***

This permit condition existed in the 2003 general permit and was moved into its own section. It was reworded to clarify that any person who owns or operates a CAFO that is not required to obtain general permit coverage may elect to be covered by the general permit. It also specifies that such person would be subject to the terms and conditions of the permit unless and until permit coverage is terminated.

##### ***S1.C Requirements and Schedule to Obtain Permit Coverage (formerly S1.B Schedule for General Permit Coverage)***

This section of the general permit was revised to address renewal applications and remove application schedules that are no longer relevant. No change was made to the application schedule for proposed CAFOs; however, persons electing to be covered by the general permit are now required to submit an application at least 180 days before permit coverage is desired. This is an increase from the previous 90 days to better reflect the time needed by ODA to review and approve an AWMP and public notice a new application. The schedule now reads as follows:

- Application for Proposed CAFO  
To obtain permit coverage, any person proposing a new CAFO that is regulated by this permit or electing to be covered by this permit must submit an *ODA Application to Register (ATR)* and Animal Waste Management Plan (AWMP) at least 180 days prior to the time that the operation commences.
- Future Renewal of General Permit  
To renew permit coverage, the permittee must submit a renewal application by the date specified by ODA but no later than the expiration date of this permit.

In addition, the following two permit conditions in the 2003 general permit were included in this section to improve the organization of the general permit:

- S1.C.3 (formerly S1.C.4)  
ODA will notify the applicant in writing if permit coverage is approved or denied. Permit coverage does not begin until this written notice is provided by ODA to the applicant. Written notification will include an *ODA Notice of Registration* that will include the following:
  - (a) The owner or operator's legal name;
  - (b) Facility name and location;
  - (c) Contact information, including mailing address and telephone number;
  - (d) Effective date of permit coverage;
  - (e) Maximum number of animals allowed at the facility; and
  - (f) Regulatory status of the operation.
    - (i) ODA will use the following classifications for regulatory status:
      - (1) Large concentrated AFO as defined in 40 CFR §122.23(b)(4);
      - (2) Medium concentrated AFO as defined in 40 CFR §122.23(b)(6);
      - (3) Small concentrated AFO as designated by the director pursuant to OAR 603-074-0012;
      - (4) Medium confined animal feeding operation as defined in this permit; or
      - (5) Small confined animal feeding operation as defined in this permit.
    - (ii) A *small or medium confined animal feeding operation* will be categorized as *concentrated* if:
      - (1) A discharge to waters of the U.S. occurs that is not allowed by this general permit, and
      - (2) The operator does not or cannot make the change(s) necessary to prevent such discharge from recurring to the satisfaction of ODA.

Note: S1.C.3.f was further expanded in response to public comment to provide additional information on how ODA will categorize different operations. See the *Summary of comments and response to comments received for the proposed renewal of CAFO NPDES General Permit #01-2009*, June 29, 2009, for more information.

- S1.C.4 (formerly S1.C.5)  
Coverage under this permit will be cancelled upon the issuance of an individual permit.

#### ***S1.D General Permit Coverage (formerly S1.C)***

In addition to moving the condition of how ODA determines an operation's regulatory status (discussed above) out of this section of the permit, the section was revised as follows:

- As discussed previously in section 1.2, p. 1 of this document, a statement was included to describe the purpose of the general permit and clarify that discharges of manure, litter, or process waste water to waters of the state are only expected to occur under extreme weather conditions and as limited by the conditions of the general permit.
- Clarified that the general permit covers the discharges of only those pollutants resulting from processes, wastes, and operation identified in the AWMP. The previous permit referred to pollutants identified in the permit application process, but ODA and DEQ determined that it is preferable to refer to the AWMP because it more detailed than the *ATR*.
- Removed the condition that specifies that the permit does not cover activities or discharges otherwise under an individual NPDES or WPCF permit until the individual permit expires or is cancelled and general permit because it was redundant. Interaction between individual and general permit coverage is already discussed in S1.C.4 and S1.F.

This section continues to specify the following:

- That the permit does not cover disposal of human wastes or systems that mix human wastes.
- Provides that a permittee in compliance with the permit during its term is considered to be in compliance, for purposes of enforcement, with state water quality laws and relevant sections of the CWA except for any toxic effluent standard and prohibitions imposed under section 307 of the CWA and groundwater protection requirements established under OAR 340-040.

#### ***S1.E Request for Cancellation (formerly S1.D)***

This section of the general permit remains mostly unchanged except for a few clarifications. It specifies that the permittee may request in writing that permit coverage be cancelled if:

- Conditions or standards have changed so that the source or activity no longer qualifies for general permit coverage; *or* (“or” was added in the permit condition to indicate that either condition could qualify for permit cancellation)
- The facility no longer has animals on site and waste storage facilities have been properly decommissioned according to Natural Resources Conservation Service (NRCS) code 360 (the reference to this code was updated in the permit condition to the January 2006 version); and
- The permittee certifies that it will not commence operations regulated by the general permit at the same location without making a new application for registration under the general permit or application for an individual permit.

ODA will respond to a written request for cancellation by conducting a site inspection and a review of the permittee’s file. ODA will also notify the permittee in writing of its determination to grant or deny the request with an explanation of why the request is denied.

#### ***S1.F Individual Permit Coverage (formerly S1.E)***

Except for renumbering and updating the rule citation, no changes were made to this section of the general permit. This condition specifies that the director may require any person to obtain an individual permit pursuant to OAR 340-045-0033(10).

#### ***S1.G Request for Confidentiality***

This section is new to the general permit. It was added to highlight the requirements in EPA’s regulations and Oregon statutes relating to public requests for records relating to registrations under the permit. Under EPA’s regulation, the name and address of an applicant or registrant, application and attachments to an application submitted to ODA, and discharge data cannot be kept confidential [40 CFR §122.7(b)and (c)]. Under Oregon law, certain other records, reports or

information may be protected as a trade secret under appropriate circumstances if the permit applicant or registrant requests nondisclosure under the procedures set out in the statute [ORS 468.095(2)].

***S1.H Public Notice and Participation Requirement***

As discussed in section 2.4, *Animal Waste Management Plans: Public Notice and Enforceable Effluent Limitation*, p. 6, the U.S. Court of Appeals for the Second Circuit determined that AWMPs required by NPDES permits must be made available to the public for review. EPA finalized the public notice requirements for *concentrated animal feeding operations* in their November 2008 regulation. As a result, ODA and DEQ require public notice and participation prior to approving new permit coverage, renewing permit coverage, or approving proposed substantial changes to AWMPs for *concentrated animal feeding operations* and expanded these requirements to *small and medium confined animal feeding operations* as detailed in *Table 3: Public Notice and Participation Requirement* below. For more information on “substantial changes” see section S3.D AWMP Updates, p. 28. The expansion of these requirements to *small and medium confined animal feeding operations* will require additional agency resources, but ODA and DEQ believe that the public is interested in the permitting process and may have additional information for agency consideration prior to granting permit coverage.

ODA may batch multiple notices as regionally appropriate. Application and permit documents (e.g., ATR, renewal application, AWMP) will be available for public review at ODA headquarters and appropriate field offices. If available, electronic copies of documents will be provided upon request. Public hearings will be scheduled if written requests for public hearing are received during the comment period from at least ten persons or from an organization or organizations representing at least ten persons. ODA will provide a minimum of 30 days notice of a hearing if one is scheduled and the public notice period will remain open for additional comments for at least 7 days after the public hearing. This notice period was extended to 30 days from the initial proposal of 14 days to comply with the 2008 EPA concentrated animal feeding operations rules.

**Table 3: Public Notice and Participation Requirement**

	All CAFOS		Small, Medium, or Large Concentrated	Small or Medium Confined
<b>Permit Action</b>	(a) Receipt of ATR for existing operation not under permit or new proposed operation	(b) Receipt of renewal application	(c) Receipt of proposed substantial change to <i>small, medium, or large concentrated animal feeding operation's</i> AWMP (see p. 28 for more information on substantial changes)	(d) Receipt of proposed substantial change to <i>small or medium confined animal feeding operation's</i> AWMP (see p. 28 for more information on substantial changes)
<b>Public Participation Process</b>	(i) Public notice of a comment period of at least 35 days provided as follows: <ul style="list-style-type: none"> <li>Published in regional newspaper;</li> <li>Posted on ODA and DEQ websites; and</li> <li>Emailed to interested parties list maintained by ODA.</li> </ul> (ii) Opportunity for public hearing. (iii) A written response to relevant comments will be developed by ODA and made available to interested parties.	(i) Public notice of a comment period of at least 35 days provided as follows: <ul style="list-style-type: none"> <li>Posted on ODA and DEQ websites; and</li> <li>Emailed to interested parties list maintained by ODA.</li> </ul> (ii) Opportunity for public hearing. (iii) A written response to relevant comments will be developed by ODA and made available to interested parties.	(i) Public notice of a comment period of at least 35 days provided as follows: <ul style="list-style-type: none"> <li>Posted on ODA and DEQ websites; and</li> <li>Emailed to interested parties list maintained by ODA.</li> </ul> (ii) Opportunity for public hearing. (iii) A written response to relevant comments will be developed by ODA and made available to interested parties.	(i) Public notice of a comment period of at least 14 days provided as follows: <ul style="list-style-type: none"> <li>Posted on ODA and DEQ websites; and</li> <li>Emailed to interested parties list maintained by ODA.</li> </ul> (ii) Opportunity for public hearing. (iii) A written response to relevant comments will be developed by ODA and made available to interested parties.
<b>Contents of Public Notice</b> Note: Access to the AWMP will also be provided for public review; however, not all AWMPs will be available electronically.	<ul style="list-style-type: none"> <li>Name of operation</li> <li>Name of operator or owner if different than operator, mailing address, and telephone number</li> <li>Physical address of operation</li> <li>Type of operation</li> <li>Number of animals proposed</li> <li>Land Use Compatibility Statement (LUCS)</li> <li>Summary of AWMP</li> </ul>	<ul style="list-style-type: none"> <li>Name of operation</li> <li>City, county, and zip code</li> <li>Permit registration number</li> <li>Type of operation</li> </ul>	<ul style="list-style-type: none"> <li>Name of operation</li> <li>City, county, and zip code</li> <li>Permit registration number</li> <li>Type of operation</li> <li>Overview of proposed substantial change</li> </ul>	<ul style="list-style-type: none"> <li>Name of operation</li> <li>City, county, and zip code</li> <li>Permit registration number</li> <li>Type of operation</li> <li>Overview of proposed substantial change</li> </ul>

## 6.5 Special Conditions: S2. Discharge Limitations and Prohibitions

### *S2.A Discharge Limitations*

The general permit continues to prohibit the discharge of process wastes to surface water or groundwater except as allowed by federal regulation. Discharges during the federally-allowed exception events must not cause or contribute to a violation of state water quality standards. There were no major changes to this section except for the clarification that process wastes includes manure, litter, and process waste water.

This limitation and the production area limitation discussed below are consistent with OAR 340-051-0020(1), which states that “all confinement areas, manure handling and accumulation areas and disposal areas and facilities must be located, constructed, and operated such that manure, contaminated drainage waters or other wastes do not enter the waters of the state at any time, except as may be permitted by the conditions of a specific waste discharge permit issued in accordance with ORS 468B.050.”

### *S2.B Production Area Limitations*

#### *Small and medium confined animal feeding operations and small, medium, and large concentrated animal feeding operations, except for new source swine, poultry, and veal large concentrated animal feeding operation*

The production area limitations for most CAFOs remain unchanged for the most part; however, an addition was made to add that the permittee must also operate the production area in accordance with the applicable inspection, maintenance, recordkeeping, and reporting requirements the general permit. Except for new source swine, poultry, and veal large *concentrated animal feeding operations*, CAFOs are prohibited from discharging to surface water except when rainfall events cause an overflow of waste management and storage facilities designed, constructed, operated, and maintained to contain all manure, litter, and process waste water including the contaminated runoff and direct precipitation from a 25-year, 24-hour rainfall event (defined by the National Weather Service). This means that if a facility is designed, constructed, operated, and maintained according to these requirements, a discharge from the facility would not automatically be a permit violation provided it does not cause or contribute to an instream violation of state water quality standards. However, if the facility is designed correctly but not properly managed, such a discharge may be considered a permit violation. As a result, operators must be vigilant in assuring that the waste management system is adequate and operating properly to comply with permit conditions.

The prohibition on discharge except during a 25-year, 24-hour rainfall event was developed by EPA as an effluent limitation guideline for *large concentrated animal feeding operations* and is detailed in 40 CFR Part 412. It represents the “best available technology economically achievable” or “BAT” for treatment of process waste water as determined by EPA. In the 2003 general permit, ODA and DEQ expanded this prohibition to all CAFOs regardless of size because ORS 468B.200 requires the protection of the quality of waters of the state by preventing animal wastes from discharging into waters of the state and OARs adopted in 1972 have regulated CAFOs with the goal of preventing discharges to surface water and groundwater.

In addition, consistent with ORS 468B.200 and OAR 340-051-0020(1), all authorized discharges from the CAFO production area must be properly land applied or otherwise handled in a way that minimizes impacts on surface water or groundwater of the state and seepage to groundwater from

waste storage or animal confinement facilities must not exceed design rates as approved by ODA or violate state groundwater quality protection standards.

New source swine, poultry, and veal large concentrated animal feeding operations

In 2003, EPA adopted new regulations for “new source swine, poultry, and veal *large concentrated animal feeding operations*.” For purposes of this general permit, a “new source” is a swine, poultry, and veal *large concentrated animal feeding operations* that commenced discharging after the April 14, 2003 adoption of the new federal regulations. Previously, these types of operations were held to the same standard discussed in the section above: discharge to surface waters was prohibited except when rainfall events caused an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste water plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event. The new regulation held “new source” swine, poultry, and veal *large concentrated animal feeding operations* to a higher standard: discharge to surface waters is prohibited except when rainfall events cause an overflow from a 100-year, 24-hour rainfall event.

EPA determined that waste water control facilities designed to accommodate the 100-year, 24-hour rainfall event were technologically feasible and would not pose a barrier to entry into the swine, poultry and veal industry. EPA also found that it was common for such operations to construct facilities that keep animals in total confinement (covered housing) that were not exposed to rainfall or storm water runoff. In addition, many new operations are based on manure handling systems that greatly reduce or eliminate water use, such as hog and poultry high-rise houses, or that contain manure in covered or indoor facilities, such as underhouse pit storage systems and litter storage sheds. New facilities could also choose flush systems with lagoons that are covered or sited and designed to achieve total containment. Consistent with the 2003 EPA regulation, ODA and DEQ incorporated the 100-year, 24-hour rainfall event exception into the 2003 general permit.

Since the 2003 regulation was adopted, the Second Circuit Court in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2<sup>nd</sup> Cir. 2005) directed EPA to clarify the statutory and evidentiary basis for allowing the exception for a 100-year, 24-hour or larger rainfall event. The court noted that substantially preventing discharges is not the same as prohibiting them outright. As a result, the 2008 EPA regulation removed the reference to the 100-year rainfall event exception and replaced it with a provision that allows the director to establish best management practice (BMP) effluent limitations designed to ensure no discharge. To comply with the 2008 EPA regulation, ODA and DEQ removed the 100-yr rainfall event exception from the general permit.

***S2.C Land Application Limitations***

This section of the general permit continues to require that wastes be applied at agronomic rates and discharges to groundwater due to seepage beyond the root zone comply with groundwater standards. The following revisions were made to the permit:

- S2.C.1 was clarified to specify that wastes must be applied in agronomic rates “in accordance with its AWMP,” not just proper agricultural practices.
- S2.C.2 from the 2003 permit, which is the requirement that applications be quantifiable, based on NRCS guidance, and account for all sources of nitrogen and phosphorus, was moved to S3.C as an element of the AWMP.
- S2.C.3 (formerly S2.C.4) was expanded to provide additional requirements for applications to frozen soil. The permit now requires that applications to frozen soil to be addressed in the permittee’s AWMP. Additionally, the section of this condition that addressed applications

during rainfall events was moved to a new condition S2.C.4.

- S2.C.4 continues to prohibit applications to saturated soils or during events that are expected to result in saturated soils or runoff as previously required in S2.C.4; however, it now also recognizes that in some cases such an application may be a desired alternative to allowing waste storage or waste water control facilities to overflow. For example, land application to saturated soils to pond waste water onsite provides for greater protection of surface waters than a direct overflow of a waste storage tank to surface waters. In these cases, condition S2.C.4 clarifies that this type of land application will be considered an upset condition and the permittee must comply with the provisions of G18 Upset [40 CFR §122.41(n)].

#### ***S2.D Direct Access of Animals to Surface Waters of the State is Prohibited***

The permit continues to prohibit direct animal contact with surface waters of the state in the production area of the CAFO. Direct contact means any situation where animals in the production area have free access and are allowed to loiter or drop waste in surface waters. Direct animal contact with surface waters by animals on pasture or rangeland is not, by itself, a violation of the permit.

#### ***S2.E Waste Storage Facilities***

##### Permit Conditions

There were no major changes to this section:

- S2.E.1 continues to require that adequate storage capacity for solid and liquid wastes be provided so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the Land Application Limitations in permit condition S2.C.
- S2.E.2 continues to require that the permittee site, design, construct, operate, and maintain all waste storage facilities consistent with the waste management plan. New and modified construction of waste facilities must be approved in advance and prior to construction by ODA in conformance with ORS 468B.055 and OARs 340-051 and 603-074
- S2.E.3 continues to require that the permittee with a *large concentrated animal feeding operation* have depth markers in all surface impoundments to indicate the maximum design volume, minimum capacity necessary to contain the applicable rainfall event, and the depth of manure and process waste water.

##### More Information on Design and Construction Standards

All waste water control facilities and confined animal feeding operations must be designed, constructed, maintained, and operated in accordance with OAR 340-051. ODA will accept design and post-construction certification by a licensed engineer for:

- Earthen impoundments (e.g., ponds, basins and lagoons with permeable or impermeable liners)
- Earthen conveyances (e.g., ditches)
- Animal holding areas (e.g., lots, pens, exercise yards, alleys, and earthen-floored buildings within the production area)
- Primary storage structures for liquid and solid manure (e.g., concrete or steel tanks, earthen- or concrete-surfaced solid manure storage facilities). A primary storage structure is any storage structure intended to hold an operation's waste for a period of five or more days.

For CAFOs intending to use experimental or unproven treatment methods or technology, design and post-certification by a licensed engineer is not allowed. In these cases, the operator must

contact ODA prior to construction for approval on a case-by-case basis. For all other modifications or new construction, no approval will be required. However, any such modification or construction must be described in the current, approved waste management plan, or a revised plan must be prepared and submitted to ODA for approval prior to construction.

***S2.F Prevention of System Overloading***

There are no changes to this section of the permit. The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by ODA in the *Notice of Registration and General Permit Summary* until an updated plan is approved in writing by ODA. In addition, animal numbers must not exceed the capacity of the waste storage facilities or the maximum number of animals authorized under the permit holder's registration by ODA.

***S2.G Handling of Animal Mortalities***

There are no changes to this section of the permit. The permittee must not dispose of animal mortalities in liquid manure or waste water control facilities. Animal mortalities must be handled in such a way as to prevent discharge of pollutants to surface water or groundwater.

***S2.H Proper Operation and Maintenance***

There are no changes to this section of the permit. The permittee must at all times properly operate and maintain all facilities and systems used for process waste collection, storage and utilization, and correct any deficiencies found as soon as possible.

***S2.I Maintaining Compliance if System Fails***

The permit continues to require that the permittee must control all applications and discharges upon reduction, loss, or failure of the waste storage or utilization facilities until the facilities are restored or an alternative method of storage or utilization is provided. The requirement that this condition applies only when the primary source of power is reduced, lost, or fails was removed because ODA and DEQ believe that the permittee should control application and discharges regardless of whether the reduction, loss, or failure of facilities is due to a loss of power or some other condition.

***S2.J Setback Requirement***

The setback requirement remains the same for *large concentrated animal feeding operations* in the general permit. In the land application areas, *large concentrated animal feeding operations* must maintain a setback area within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, well heads, or other conduits to surface waters where manure, litter, and other process waste waters are prohibited. As a compliance alternative and if demonstrated to the satisfaction of ODA, the *large concentrated animal feeding operation* may:

- a. Establish a 35-foot vegetated buffer where manure, litter, and other process waste waters are prohibited; or
- b. Demonstrate that a setback or vegetated buffer is not necessary or may be reduced *because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.* (Note: The italicized text was added to the general permit in response to comments. See the *Summary of comments and response to comments received for the proposed renewal of CAFO NPDES General Permit #01-2009*, June 29, 2009, for more information.)

A setback requirement was included for all other CAFOs of smaller sizes; however, a size requirement has not been specified. ODA expects to review and approve proposed setbacks for smaller CAFOs on a case-by-case basis in individual AWMPs. All CAFOs must include setback distances in their AWMPs.

### ***S2.K Manure, Litter, or Process Waste Water Transfers***

This condition was developed to incorporate condition S4.D in the 2003 general permit condition and expand on the requirements for manure, litter, and process waste water transfers:

- S2.K.1 now clarifies that the permittee retains responsibility of the manure, litter, or process waste water until the transfer or export is completed with the required documentation.
- S2.K.2 reminds the permittee that records are required as specified in permit condition S4.C.
- S2.K.3 is the former S4.D permit condition requiring that the permittee with a *large concentrated animal feeding operation* provide the recipient of manure, litter, or process waste water with a nutrient analysis prior to the transfer. The condition has expanded to specify that the nutrient analysis is for manure and must be from the previous 12 months.

### ***S2.L Proper Disposal of Other Wastes***

The condition to properly dispose of chemicals and other contaminants was moved from S3.C to this section and modified for clarification. *Other wastes* was also added to description and it was also made clear that any of these chemicals, contaminants, or other wastes must be identified in the AWMP if they are to be disposed of in a system that is designed to treat them.

## **6.6 Special Conditions: S3. Animal Waste Management Plan**

### ***S3.A Animal Waste Management Plan (AWMP) Implementation and Compliance***

Consistent with the 2003 general permit, the renewed general permit requires that all permittees develop and implement an AWMP. In the general permit proposed for renewal, dates in S3.A were changed from December 31, 2006 to February 27, 2009 to reflect the change in the federal date for obtaining permit coverage and implementing an AWMP; however, the February 27, 2009 date was removed from the renewed general permit because the date has since passed. (Note: States may request that plans be submitted sooner and, as a result, the December 31, 2006 due date was valid for the Oregon small and medium confined animal feeding operations and concentrated animal feeding operations registered to the 2003 general permit.)

This section continues to require permittee compliance with all terms and conditions of its approved AWMP (see condition S3.A.3) and inform the permittee that absence of an AWMP or absence of ODA approval of an AWMP does not allow the permittee to violate other permit requirements (see condition S3.A.4). In response to comments from EPA, a statement clarifying that the ODA-approved AWMP is incorporated into the permit by reference was added to S3.A.3.

### ***S3.B AWMP Submittal and Public Notice***

This section was revised to refer the permittee to S1.C for the schedule to submit its AWMP and S1.H for public notice and participation details.

### ***S3.C AWMP Elements***

Minor revisions were made to this section as follows:

- S3.C.1 continues to require permittees to prepare their AWMPs in accordance with the terms and conditions of the permit and guidelines contained in OAR 340-051 and 603-074. AWMPs must conform to the Natural Resources Conservation Service (NRCS) conservation practice

standard guidance 590 for Oregon entitled *Nutrient Management*. 590 has since been updated to a May 2008 version and condition S3.C.1 was updated to reflect the new version of this guidance. ODA will continue to accept plans from NRCS-certified Comprehensive Nutrient Management Plan (CNMP) writers. Note: In the event of any inconsistency between the general permit and NRCS 590, the conditions of the general permit apply.

- S3.C.2 was unchanged; the permit continues to allow AWMPs to include a schedule for improvement projects.
- S3.C.3 was re-worded to clarify that the AWMP must to the extent applicable contain “procedures” to ensure that the elements are met. In addition, more information on the land application protocols that need to be detailed was added, including moving the requirement that applications be quantifiable and based on NRCS guidance from S2.C.2 in the 2003 general permit into this section. Also, a compost management plan requirement if applicable under OAR 340-096 was included. Finally, a section on requirements for frozen soil applications was added as well as a requirement to include procedures for transfer or export of manure, litter, or process waste water. This condition now reads as follows (major insertions are underlined; for detailed insertions and deletions, see the general permit):

*The AWMP must to the extent applicable include the following:*

- ~~Ensure adequate collection, handling, and storage of manure, litter, and process waste water.~~ Procedures to ensure collection, handling, and storage of contaminated storm water runoff from the production area, manure, litter, and process waste water in compliance with the requirements of S2 Discharge Limitation and Operating Requirements. Calculations used to determine that storage capacity exists must be provided, including a demonstration that facilities are at least designed and constructed to contain all manure, litter, process waste water, contaminated storm water runoff from the production area, and direct precipitation from a 25-year, 24-hour rainfall event.*
- Procedures to ensure proper operation and maintenance of the storage facilities.*
- Procedures for ~~ensure~~ proper management of animal mortalities. ~~Animal mortalities may to ensure that they are not~~ be disposed of in any liquid ~~manure, storm water, or process waste water~~ storage or treatment system that is not specifically designed to treat animal mortalities.*
- Procedures to ensure that clean water is diverted, as appropriate, from the production area.*
- Procedures to prevent direct contact of confined animals with surface waters.*
- ~~Ensure that chemicals and other contaminants handled on site, are not disposed of in any manure, litter, process waste water, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants.~~*
- ~~(g)~~(f) Identification of appropriate site-specific conservation practices to be implemented, including ~~as appropriate,~~ buffers, setback areas, or equivalent practices, to control runoff of pollutants to surface water and groundwater.*
- ~~(h)~~(g) Protocols to land apply manure, litter, or process waste water in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process waste water. The protocols must include the following:*

  - The NRCS Phosphorous Index, USDA/NRCS Oregon Agronomy Technical Note #26, revised June 2008, must be completed for all fields that receive manure, litter or process waste water to determine if nitrogen or phosphorous*

is the most limiting nutrient. The maximum nutrient application rate must be calculated for the most limiting nutrient (from Technical Note #26), and must account for all other nitrogen and phosphorus sources.

Note: The reference date was updated from October 2001 to June 2008 to reflect the update made by NRCS.

- (ii) Expected crop yields.
- (iii) Calculations showing the total nitrogen and phosphorus to be applied annually to each field, including sources other than manure, litter, or process waste water.
- (iv) Annual manure application rates and an explanation of the basis for determining these rates. For large concentrated animal feeding operations, these rates must be based on actual test data. For other operations, data or "book values" from established reference sources (e.g., Oregon Animal Waste Management program) may be used instead of actual testing.
- (v) Method(s) used to apply manure, litter, or process waste water.
- (vi) Timing of manure, litter, and process waste water applications. (This requirement was added in response to public comment and because it was mistakenly omitted in the proposed permit.)
- (+)(h) For all operations, protocols for soil testing. For large concentrated animal feeding operations, protocols for ~~appropriate~~ testing of manure, litter, and process waste water, ~~and soil~~. For other operations that are not required to test manure, litter, or process waste water, ~~references used instead of actual testing data or test protocols if testing are not required but the references that are used to characterize manure, litter, or process waste water must be included.~~
- (+)(i) An Agricultural Compost Management Plan if required by OAR 340-096 for composting activities.
- (\*)(j) Frozen soil application procedures if applications of manure, litter, or process waste water will be made to frozen soil. At a minimum, the following must be provided:
  - (i) Description of the potential receiving field(s), estimates of waste amounts and types, and estimated timing of applications.
  - (ii) Aerial photo(s) identifying all areas and surface water bodies within 1,000 ft. of the boundaries of the receiving field(s).
  - (iii) Soil map(s) identifying soil types for receiving field(s).
  - (iv) Topographic map(s) for receiving field(s).
  - (v) Description of the structural practices in place to ensure that no discharges to surface water occur during application and after the soil thaws.
  - (vi) Description of the method used to determine when soil is frozen and management practices to be followed when planning an application and during and after an application to frozen soil.
  - (vii) Description of monitoring and reporting requirements to ensure that the permittee is in compliance with frozen soil application procedures.
- (+)(k) Procedures for transfer or export of manure, litter, or process waste water.
- (+)(l) Identification of specific records that will be maintained to document the implementation and management of the minimum elements described above.

AWMPs must demonstrate that a CAFO will achieve an agronomic balance of nutrients land-applied with nutrients removed in harvested crops. ODA will typically require an agronomic balance for nitrogen and a phosphorus balance if the NRCS phosphorus index for the soil in land application field(s) is (are) exceeded.

A phosphorus balance may also be required if a CAFO is within a watershed that is designated by the state as water quality limited for phosphorus.

The level of detail of information required in AWMPs will depend on the size, complexity, and other specifics of each CAFO, and the need for additional or alternative information in an AWMP will continue to be established by ODA on a case-by-case basis as required as part of a corrective order or to account for extraordinary circumstances.

Once an AWMP is approved by ODA, the CAFO must be managed in compliance with the AWMP at all times. The application of process waste water more frequently than specified in the AWMP or at a concentration in excess of AWMP specifications or at times not specified in the AWMP would be a violation of the permit.

### ***S3.D AWMP Updates (formerly S3.D Plan Updates and Changes)***

This section of the permit was revised to address the 2008 federal regulation adopted by EPA for *small, medium, and large concentrated animal feeding operations* (73 Federal Register 70418, Nov. 20, 2008).

#### Public Notice Requirements for *Small, Medium, and Large Concentrated Animal Feeding Operations*

The 2008 EPA regulations require that ODA and DEQ notify the public of proposed “substantial changes” to an AWMP for a *small, medium, or large concentrated animal feeding operation* prior to granting approval of the change. Consistent with federal regulation, the permit was revised to add the following as “substantial changes” for a *small, medium, or large concentrated animal feeding operation*:

- Addition of new land application areas not previously included in the AWMP, unless the land application area is covered by an existing AWMP that has already been incorporated into an existing NPDES permit and the application of manure, litter, or process waste water on the newly added land application area is in accordance with that existing NPDES permit.
- Any changes to the field-specific maximum annual rates for land application.
- Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop.
- Addition of any crop or other uses not included in the AWMP and corresponding field-specific rates of application.
- A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
- Any changes that are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S. are considered substantial. (Note: ODA and DEQ originally proposed that a change in the type of manure system would be sufficient to address the federal regulation requiring public for changes that are like to increase the risk of nitrogen and phosphorus. However, upon comment by EPA and further discussion, ODA and DEQ determined that the specific federal requirement was needed in the permit.)

The permittee with a *small, medium, or large concentrated animal feeding operation* must submit any proposal to make substantial changes to its AWMP to ODA for approval at least 60 days in advance of the proposed changes. ODA will public notice the proposal as described in S1.H (see

p. 19) for a minimum of 35 days. ODA will notify the permittee of its final decision concerning the proposed changes after the public notice period ends. The permittee may not implement a proposed change until ODA has approved it.

Public Notice Requirements for *Small and Medium Confined Animal Feeding Operations*

ODA and DEQ also developed a list of *substantial changes* for *small and medium confined animal feeding operations* that require public notice because EPA did not address these types of activities in their rulemaking. *Small and medium confined animal feeding operations* are different from *concentrated animal feeding operations* because they do not typically discharge to waters of the U.S. and are smaller in size than *large concentrated animal feeding operations*. As a result, they are less likely to have an impact on surface waters and a modified system for public notice is appropriate. “Substantial changes” for *small and medium confined animal feeding operations* include the following:

- A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
- An increase in maximum allowed animal numbers such that the operation becomes defined as a *large concentrated animal feeding operation*.

The permittee with a *small or medium confined animal feeding operation* must submit any proposal to make substantial changes to its AWMP to ODA for approval at least 45 days in advance of the proposed changes. ODA will public notice the proposal as described in S1.H (see p. 19) for a minimum of 14 days. ODA will notify the permittee of its final decision concerning the proposed changes after the public notice period ends. The permittee may not implement a proposed change until ODA has approved it.

ODA Approval for Non-Substantial Changes

Public notice of a non-substantial change described below is not required; however, *small, medium, and large concentrated animal feeding operations* and *small and medium confined animal feeding operations* must have the following non-substantial changes approved by ODA prior to implementation:

- An increase in animal numbers greater than 10% of the registrant's maximum allowed animal numbers.
- When facility expansions, production increases, or process modifications will result in new or increased generation of waste, litter, or process waste water beyond the scope of the current AWMP.

The permittee with a *small, medium, or large concentrated animal feeding operation* must submit any proposal to make non-substantial changes to its AWMP to ODA for approval at least 60 days in advance of the proposed changes unless a different timeframe is allowed by ODA. The permittee with a *small or medium confined animal feeding operation* must submit any proposal to make non-substantial changes to its AWMP to ODA for approval at least 45 days in advance of the proposed changes unless a different timeframe is allowed by ODA. ODA will notify the permittee of its final decision concerning the proposed changes after reviewing the proposal. The permittee may not implement a proposed change until ODA has approved it.

**6.7 Special Conditions: S4. Monitoring, Inspection, Recordkeeping, and Reporting Requirements**

***S4.A Monitoring Requirements***

Discharge Monitoring

The discharge monitoring requirements were not changed. Any discharge or runoff that is not allowed by the permit must be recorded and reported to ODA. The record must contain a description and cause of the discharge; the period of discharge, including exact dates, times, and duration of discharge; an estimate of the volume of the discharge; name or location of receiving water, and corrective steps taken to reduce, eliminate or prevent recurrence. In the event a discharge occurs, ODA must be notified within 24 hours of the event. A written report must be submitted to ODA within five (5) days. In the event of equipment failure, ODA must be notified within 24 hours.

Analytical Monitoring

The analytical monitoring requirements were not changed; however, additional information on the specific parameter to be analyzed was provided and references to sample method were included. The requirements are designed to provide the CAFO with information to assist in the development and evaluation of application rates required in the AWMP. This section was also reformatted into tables for easier reading. Monitoring is required as follows:

*Large concentrated animal feeding operations only*

Sample Type	Analytical Parameter	Minimum Frequency	Sample Method
Manure, litter, and process waste water	(i) Total nitrogen (ii) Total phosphorus	Annually	Sample according to guidance contained in NRCS 590 or 633 practice standard.
Exported manure, litter, and process waste water	(i) Total nitrogen (ii) Total phosphorus	Annually	Sample according to guidance contained in NRCS 590 or 633 practice standard.
Soil from land application area(s)	(i) Total nitrogen (ii) Total phosphorus	Once every 5 years from all fields where manure, litter, or process waste water is applied.	Sample according to guidance contained in PNW 570-E, EM 8832-E, or NRCS 590 practice standard.

*All other operations*

Sample Type	Analytical Parameter	Minimum Frequency	Sample Method
Soil from land application area(s)	(i) Total nitrogen (ii) Total phosphorus	Once every 5 years from all fields where manure, litter, or process waste water is applied.	Sample according to guidance contained in PNW 570-E, EM 8832-E, or NRCS 590 practice standard.

Note: In the event of any inconsistency between the monitoring requirements of the general permit

and NRCS 590, the monitoring requirements of the general permit apply. The permittee should be aware that NRCS 590 monitoring frequencies may need to be followed to access or maintain federal funds.

**S4.B Inspection Requirements**

The inspection requirements were not changed; however, they were reformatted into a table for easier reading and clarification added that equipment used for land application need only be inspected when in use. Inspections are required as follows:

Item	Large Concentrated	Other Operations
(a) Storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to waste water and manure storage and containment structures	Weekly and record results	Periodically
(b) Water lines, including drinking water or cooling water lines	Daily and record results	Periodically
(c) Equipment used for land application of manure, litter, or process waste water	Daily when equipment is in use and record results	Periodically when equipment is in use
(d) Liquid impoundments for manure and process waste water	Weekly and record depth of manure and process waste water according to depth marker required by general permit condition S2.E.3.	Periodically

Any deficiencies found as a result of these inspections must be corrected as soon as possible. The permittee with a *large concentrated animal feeding operation* must record any actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.

**S4.C Recordkeeping and Availability Requirements**

The recordkeeping and availability requirements were not changed. All required records must be kept and maintained at the facility for a period of five years and must be available to ODA upon request. Recordkeeping requirements were reformatted into a table for easier reading, and the requirement to maintain animal mortality management and practices was deleted because it is already a requirement in the AWMP. The following recordkeeping is required:

Item or Parameter	Large Concentrated	Other Operations
(a) Expected crop yields.	Required	Required
(b) Date, amount, and nutrient loading of manure, litter, or process waste water applied to each field.	Required	Required
(c) Weather conditions at the time of application and 24 hours before and after application.	Required	Not required
(d) Explanation of the basis for determining annual manure application rates, as provided in the technical standards established by ODA.	Required	Required

Item or Parameter	Large Concentrated	Other Operations
(e) Calculations showing the total nitrogen and phosphorus to be applied annually to each field, including sources other than manure, litter, or process waste water.	Required	Required
(f) Total amount of nitrogen and phosphorus actually applied annually to each field, including documentation of calculations of the total amount applied.	Required	Required
(g) Method(s) used to apply the manure, litter, or process waste water.	Required	Required
(h) Total amount of manure or waste water transferred or exported to other persons.	Required. Also include: (i) Date and amount of each transfer or export (ii) Name and address of each recipient (iii) Copy of the manure nutrient analysis conducted provided to the recipient [see S2.K.3]	Required
(i) Description of actions taken to correct deficiencies discovered during inspections.	Required (see general permit condition S4.B.2)	Not required

***S4.D Reporting Requirements***

***S4.D.1 24-hour Reporting***

An addition to permit condition S4.D.1 was made to make the permittee aware of additional situations when 24-hour reporting to ODA is required. The addition refers the permittee to condition G2.6, which requires that the permittee notify ODA within 24 hours and provide a written report within 5 days of *any* permit noncompliance that may endanger public health or the environment. As discussed previously in Section 6.7 Monitoring Requirements, p. 30, the permit continues to require that the permittee notify ODA within 24 hours of a discharge to surface water or groundwater occurs that is not allowed by the permit and submit a written report within five days to ODA. The information to be submitted is listed in Section 6.7. The permittee must also report to ODA within 24 hours of becoming aware of any significant physical failure at any time of a waste water control facility required under this permit.

***S4.D.2 Annual Report***

There were a few minor revisions to this section. Additional reporting requirements were added and several clarifications were made. ODA and DEQ believe the additional requirements are necessary to better determine if a CAFO is in compliance with its AWMP. All facilities must still provide an annual report to ODA by March 15 of each year for the previous calendar year. The report may be consolidated and incorporated into the annual inspection process, but the operator has the obligation to create and maintain the record and submit it to ODA unless instructed by ODA to do otherwise (e.g., the inspector may collect the report during an annual inspection). The following revisions were made to the annual reporting requirement in condition S4.D.2.a (major insertions are underlined; for detailed insertions and deletions, see the general permit):

- (i) Maximum number and type of animals approved by ODA in the permittee's Notice of Registration, whether in open confinement or housed under roof (e.g., beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other).
- (ii) Actual number of animals by type at the CAFO averaged over the year.
- (iii) Estimated amount of total manure, bedding, litter, process waste water, and other material that comes in contact with manure generated by the CAFO (tons, gallons, cubic feet, or cubic yards).
- (iv) Estimated amount of total manure, bedding, litter, process waste water, and other material that comes in contact with manure transferred to other persons by the permittee (tons, gallons, cubic feet, or cubic yards).
- (v) Estimated amount of manure, bedding, litter, process waste water, and other material that comes in contact with manure applied to land by the permittee (tons, gallons, cubic feet, or cubic yards).
- (vi) Total number of acres for land application covered by the AWMP developed in accordance with the terms of this permit.
- (vii) Total number of acres under control of the permittee that were used for land application of manure, litter, and process waste water in the previous 12 months.
- (viii) Summary of all manure, litter, ~~and~~ process waste water, and contaminated storm water discharges from the production area that have occurred, including date, time and approximate volume.
- (ix) A statement indicating whether the AWMP was developed or approved by a certified waste management planner.
- (x) As required by 40 CFR §122.42(e)(4)(viii), the concentrated animal feeding operation that discharges or proposes to discharge to waters of the U.S. must also report the following:
  - (1) Actual crop(s) planted and actual yield(s) for each field.
  - (2) Actual nitrogen and phosphorus content of the manure, litter, and process waste water.
  - (3) Data used and results of calculations based on protocol in the ODA-approved AWMP.
  - (4) Amount of manure, litter, and process waste water applied to each field.
  - (5) Results of soil testing for nitrogen and phosphorus if testing was performed.
  - (6) Amount of any supplemental fertilizer applied.

(Note: The condition above was added in response to comment from EPA. ODA and DEQ originally proposed that this information be maintained onsite and available upon request; however, federal regulations specifically require that the information be submitted in the permittee's annual report for concentrated animal feeding operations that discharge or propose to discharge to waters of the U.S. A concentrated animal feeding operation proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Operations that do not discharge or propose to discharge are not required to submit this information. For example, a large concentrated animal feeding operation that does not discharge or propose to discharge, is not required to submit this information in its annual report.)

In addition, the following certification statement was added to the permit as condition S4.D.2.b to ensure that the permittee provides true, accurate, and complete information:

*The annual report must be signed and certified by the permittee or permittee's authorized representative with the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."*

#### **S4.E Additional Monitoring**

The permit continues to allow in condition S4.E.1 the establishment of specific monitoring requirements a case-by-case basis for certain facilities, such as those located in groundwater management areas, or those that have been issued a corrective order relating to waste management. ODA may establish these requirements by administrative order.

To provide additional protection to the environment, condition S4.E.2 was added as follows:

*If a permittee experiences two or more discharges within a 24 month period that are not associated with a 25-year, 24-hour or greater rainfall event, ODA may require surface water and/or groundwater quality monitoring or transfer the permittee to an individual permit. Monitoring for the following parameters may be required: bacteria, total suspended solids, total Kjeldahl nitrogen, biochemical oxygen demand, and other nutrient indicators. If ODA waives the additional monitoring requirements because such monitoring would be impracticable or not likely to produce useful information, ODA will set out the basis for the decision in writing and make the decision available to interested parties.*

## **6.8 General Conditions**

The federal requirements in this section of the renewed general permit that were previously referenced in the 2003 general permit are now detailed. Changes made to the general conditions were not tracked to shorten the general permit for review purposes; however, a manual comparison of the 2003 general permit and 2009 renewal may still be made. The general conditions are not repeated or discussed in detail in this document because they are standard permit conditions required by 40 CFR §122.41 and §122.42, OAR, or previously required by the 2003 general permit.

## **7. Public Comment Period and Response to Comments**

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### **7.1 Public Comment Period**

The public comment period opened on Monday, February 2, 2009 and closed on Monday, March 16, 2009 at 5:00 p.m. Public notice was sent to interested parties on ODA and DEQ mailing lists, posted on ODA and DEQ websites, and published in the Salem newspaper. During this time

period, ODA and DEQ held one public hearing as discussed below. Comments received on ODA and DEQ's previous CAFO general permit proposal announced on September 11, 2008 were not considered and had to be resubmitted for this new proposal.

## **7.2 Public Hearing**

ODA and DEQ held one public hearing on Monday, March 9, 2009 at the ODA Basement Conference Room D, 635 Capitol Street NE, Salem OR 97301. An information session was provided at 6:00 pm at which the public had an opportunity to ask questions about the proposed renewal of the general permit. Four persons attended the information session and the public hearing began at 6:45 pm. No persons were interested in providing oral or written comments at the hearing.

## **7.3 Response to Comments**

Three sets of written comments were received on the proposed permit; one set of comments was received after the comment period ended and could not be considered. ODA and DEQ prepared a written response to the comments received and made several changes to the general permit and evaluation report in response to comments. For more information on these changes, see the *Summary of comments and response to comments received for the proposed renewal of CAFO NPDES General Permit #01-2009*, June 29, 2009.

ODA and DEQ revised this evaluation report and made changes to the proposed permit as a result of comments received. After these changes were made, the general permit was submitted to EPA on May 8, 2009 for review and approval. Comments from EPA were addressed as discussed in this document; EPA approved the general permit on June 10, 2009.